

ARKANSAS SUPREME COURT

No. CR 02-1087

JAMES KELLY HAYNES
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered March 19, 2009

PRO SE PETITION TO REINVEST
JURISDICTION IN THE TRIAL
COURT TO CONSIDER A PETITION
FOR WRIT OF ERROR CORAM NOBIS
[CIRCUIT COURT OF SEBASTIAN
COUNTY, FORT SMITH DISTRICT,
CR 2001-936]

PETITION DENIED.

PER CURIAM

A jury found petitioner James Kelly Haynes, also sometimes known as James Kelley Haynes, guilty of rape and burglary and sentenced him to life on the rape charge and 480 months' imprisonment on the burglary charge. This court affirmed the judgment. *Haynes v. State*, 354 Ark. 514, 127 S.W.3d 456 (2003). Petitioner filed a petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.1, which the trial court denied. We affirmed the order denying postconviction relief. *Haynes v. State*, CR 07-407 (Ark. Feb. 7, 2008) (per curiam). Now petitioner has filed this petition in which he seeks to pursue a writ of error coram nobis.¹ After a judgment has been affirmed on appeal, a petition filed in this court for leave to proceed in the trial court is necessary because the circuit court can entertain a petition for writ of error coram nobis only after we grant permission. *Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001) (per curiam).

¹For clerical purposes, the instant petition was assigned the same docket number as the direct appeal.

Petitioner states five grounds as his bases for the writ: (1) that the prosecution withheld evidence, a hair found on the ski mask connected to the crime; (2) that blood was drawn from petitioner for DNA tests, but that there was no record of the sample; (3) that there was new evidence introduced in petitioner's Rule 37.1 proceeding as to the location of the salvia found on the ski mask; (4) that the trial judge refused to recuse following a motion filed after trial and direct appeal; (5) that the trial judge was biased, apparently as a result of having represented petitioner in a different criminal proceeding. None of the grounds set out in the petition provides a meritorious claim for issuance of the writ.

A writ of error coram nobis is an extraordinarily rare remedy, more known for its denial than its approval. *Larimore v. State*, 341 Ark. 397, 17 S.W.3d 87 (2000). The writ is allowed only under compelling circumstances to achieve justice and to address errors of the most fundamental nature. *Pitts v. State*, 336 Ark. 580, 986 S.W.2d 407 (1999) (per curiam). We have held that a writ of error coram nobis was available to address errors found in one of four categories: insanity at the time of trial, a coerced guilty plea, material evidence withheld by the prosecutor, a third-party confession to the crime during the time between conviction and appeal. *Sanders v. State*, 374 Ark. 70, ___ S.W.3d ___ (2008) (per curiam).

The function of the writ is to secure relief from a judgment rendered while there existed some fact which would have prevented its rendition if it had been known to the trial court and which, through no negligence or fault of the defendant, was not brought forward before rendition of judgment. *Cloird v. State*, 357 Ark. 446, 182 S.W.3d 477 (2004). A writ of error coram nobis is appropriate when an issue was not addressed or could not have been addressed at trial because it was somehow hidden or unknown. *Larimore v. State*, 327 Ark. 271, 938 S.W.2d 818 (1997). For the

writ to issue following the affirmance of a conviction, the petitioner must show a fundamental error of fact extrinsic to the record. *Thomas v. State*, 367 Ark. 478, 241 S.W.3d 247 (2006) (per curiam).

We first note that none of petitioner's grounds as set forth in the petition is well-developed. While we address the issues to the extent we can determine the basis petitioner outlines, the arguments are not clearly defined. We do not go beyond what is apparent. This court does not research and develop arguments presented in pleadings to it. *See Williams v. State*, 371 Ark. 550, 268 S.W.3d 868 (2007). It is clear, even without further development, that none of the grounds presents an issue that was not or could not have been addressed at trial, or that is sufficient to establish an error within one of the recognized categories of error.² It is petitioner's burden to show that the writ is warranted. *Hutcherson v. State*, ___ Ark. ___, ___ S.W.3d ___ (Jan. 15, 2009) (per curiam). Petitioner here has failed to meet that burden.

Petitioner's first claim is the only claim that is couched in terms that might conceivably fall within one of the recognized categories of error. It concerns a hair on a mask found near the scene of the rape and which petitioner asserts was evidence that the prosecution withheld. But, the DNA evidence introduced against petitioner resulting from the ski mask was obtained from saliva, not a hair. Even if the hair were material evidence, petitioner does not assert any facts to support a claim that the evidence was withheld and the reference to the hair was contained in a probable cause affidavit that petitioner indicates was included within the record, not found outside of it. The facts

² None of petitioner's arguments are clearly stated. The State interprets petitioner's third ground as a claim of ineffective assistance and the fifth ground as concerning a motion to reduce bond. Because petitioner's arguments appear to us to be more limited, we need not address those two interpretations. But, even were we to agree with the State's interpretations, a claim of ineffective assistance of counsel in itself is not a ground to grant a writ of error coram nobis. *McArty v. State*, 335 Ark. 445, 983 S.W.2d 418 (1998) (per curiam). Issues concerning any bond would have been appropriately addressed at trial.

forming the basis of this claim were not extrinsic to the record and the issue could have been addressed at trial.

None of the remaining claims falls within one of the recognized categories of error. In petitioner's second asserted basis for the writ, the issue of any lost blood samples could also have been addressed at trial. Petitioner clearly had knowledge of any samples that he had given at that time. The facts were not hidden or unknown, and petitioner could have raised the issue at trial.

As to the issues concerning what petitioner asserts is newly discovered evidence, newly discovered evidence in itself is not a basis for relief under coram nobis. *Pitts*, 336 Ark. at 583, 986 S.W.2d at 409. A petition for the writ on that basis must provide a showing of fundamental error. *Larimore*, 327 Ark. at 280, 938 S.W.2d 822. Petitioner's claim does not fall within the recognized categories and includes no allegations of such a fundamental error. Moreover, petitioner's claim appears to assert only a discrepancy in testimony concerning the location of the tested sample, without actually identifying any new evidence. An issue concerning the location of the sample could have been addressed at trial.

The last two grounds for the writ asserted by petitioner both concern alleged bias by the trial judge and a pro se motion requesting recusal by the judge. Again, petitioner's claims do not fall within one of the previously recognized categories of error and concern an issue that could have been addressed at trial. Petitioner's allegations of bias are based upon his claim that the judge had represented petitioner prior to the trial. Petitioner had personal knowledge of the basis for his claim of bias at the time of trial; he knew that he had been represented by the individual in a previous proceeding. The facts supporting the claim were not hidden or unknown, and could have been addressed at the time of the trial. Because petitioner fails to state any meritorious claim for the writ,

we deny the petition.

Petition denied.